IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 16 OF 2005

Shri Susai Raju
S/o Tambu Raju,
62 years old,
R/o House No.115/3,
Mangor Hill, Vasco,
Goa. ... Appellant

versus

State
through P.I. attached
to Calangute Police Station. ... Respondent

Mr. M. D'Souza, Advocate for the Appellant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 7TH OCTOBER, 2006.

ORAL JUDGMENT

The accused is before this Court impugning the conviction and sentence imposed upon him under Section 20(b)

(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985(Act, for short).

2. The accused was charged and tried with an allegation that on 30-11-2002 at about 7.30 p.m. near Hotel Paradise village, at Tiwaiwaddo, Calangute, was found in illegal possession of 280 gms. of charas for which the accused could not lawfully account for. To support the charge prosecution examined six witnesses and produced several documents. On the other hand, it was the case of the accused that he was not arrested as stated by the prosecution. When he was examined under Section 313 of the Code of Criminal Procedure, 1973, the accused stated that he was stopped at about 11.30 a.m. near the football ground at Calangute when he was on his M-80 scooter, and when he was stopped, he asked for the identity of the persons who had stopped him and at that time he told P.I. Gundu Naik/PW4 that he could be searched by him at which he slapped him and took his search and took his money purse, identity card, credit card, ration card, etc. The accused did not examine any witness in support of his defence.

3. The learned Special Judge after assessing the evidence produced by the prosecution came to the conclusion that the accused was indeed found with 280 gms. of charas from the bag which was carried by him on his said scooter for which the accused could not lawfully account for. The learned Special Judge also held that the provisions of Section 50 of the Act were also complied with and so also the provisions of Section 57 of the Act and the seized article was established by the prosecution to be charas, through the evidence of Kaissare/PW1 and therefore the prosecution had proved its case beyond reasonable doubt against the accused.

4. The case of the prosecution could be considered in two aspects. The first in relation to seizure of the narcotic drug from the possession of the accused which according to the prosecution was in a white colour cloth bag hanging on the left side of the said scooter driven by the accused. To prove this part of the case of the prosecution, prosecution examined the Seizing Officer P.I. Naik/PW4, a panch witness Vinod Sharma/PW3 and Dy. S. P. De Sa/PW5.

5. As per P.I. Naik/PW4, on 30-11-2002 he was the Officer in charge of Calangute Police Station, when around 6.30 p.m. he received specific and reliable information that a South Indian person aged about 55-58 years wearing white half sleeve shirt and black pant would be coming on his M-80 two wheeler near Hotel Village Paradise with a consignment of charas at 7.15 p.m. to deliver the same to his customer and therefore he reduced the said information in writing and submitted a copy to the S.D.P.O. Shri De Sa/PW5 along with the covering letter and also telephonically conveyed the said message to him. He produced the information sent by him along with the covering letter at Exh.43. A grievance was made on behalf of the accused that the letter Exh.43 did not contain the signature of Dy. S. P. De Sa/PW5. The said letter Exh.43 could not have contained the acknowledgment of Dy.S.P. De Sa/PW5 for according to P.I. Naik/PW4 the same was sent by a bearer, and, that apart Dy. S. P. De Sa/PW5 has confirmed having received the said letter. Dy. S. P. De Sa/PW5 produced the original of the said letter sent to him by P.I. Naik/PW4 at Exh.55 and not only that after having received the said intimation he ordered a raid to be conducted by him. Dy. S. P. De Sa/PW5 also confirmed having received

subsequently the intimation sent by P.I. Naik/PW4 under Section 57 of the Act and produced the same at Exh.56.

6. P.I. Naik/PW4 further stated that he then secured the presence of two panchas namely Vinod Sharma/PW3 and Prashant Goswami, who was not examined and thereafter with the raiding party left the Police Station at about 6.45 p.m. in Police jeep bearing No.GA-01-G-0419 carrying the seal of the Police Station bearing the inscription "Police Station Calangute" and the kit box which was carried by Constable Naik. P.I. Naik/PW4 further stated that they reached near the said Hotel at about 7.00 p.m. and parked their jeep in a lane leading to N V Beach Resorts and they concealed in the nearby area and about 17.20 p.m. they noticed a person whose description matched with the information received by him and as such intercepted him and the said person got confused and he disclosed his identity as Police Inspector and showed his identity card to him. P.I. Naik/PW4 further stated that he introduced the panchas and the other raiding party to the accused and asked his name and particulars which he disclosed as "Mr. Susai Tambu Raju, resident of H.No.115/3, Mangor Hill,

Vasco and then told him about the information he had received and told him that he wanted to take his search and that of the scooter for charas and then the accused was taken to the side of the road and the accused stated that the white colour cloth bag hanging on the left side of the scooter, with red colour printed letters belonged to him. P.I.Naik/PW4 then stated that he informed the accused about his right to be searched before a Magistrate or a Gazetted Officer of his choice which offer the accused declined whereupon he told the accused to take the search of the panchas and the members of the raiding party which the accused also declined, and, thereafter he stated that he asked the accused to remove the cloth bag from the handle of the scooter and to show its contents and then the accused got down from the scooter and removed the white colour cloth bag and kept the same on the seat of the scooter and removed the things from inside and there was in it a parcel wrapped in an English newspaper and a khaki polythene wrapper besides a ration card, identity card, election card, etc. and then he opened the wrappers of the parcel and found a blackish brown slab and two pieces of similar colour substances emitting a particular odour and therefore he suspected it to be charas and when the

said substance was weighed after the wrappers were removed, it was found to be 280 gms and thereafter he put the substance in a transparent polythene bag, heat-sealed and then put it in a light green colour envelope having cloth inside and then packed and sealed with 7 seals of the Police Station and the relevant particulars were written on the sealed envelopes and signed by both the panchas, himself and the accused. He further stated that the ration card and other identity cards, etc. were similarly packed and sealed having cloth lining and signed as aforesaid after the relevant particulars were written on the same. He further stated that the wrappers were put in a cloth bag, the bag was folded and put in an envelope and was packed and sealed and signed as before. P.I.Naik/PW4 further stated that the personal search of the accused was taken and the accused was found with a brown colour leather wallet in his pant hip pocket which contained cash of Rs.1027/- in denomination of 8 x 100, 3 x 50, 1 x 20, 5 x 10, 1 x 5 and 1 x 2 besides, a note of U. S. Dollar, 3 foreign coins, HDFC Credit Card in the name of the accused, his driving license which articles were put back in the wallet which in turn was put in an envelope, packed, sealed and signed, as before, after writing the relevant details.

P.I.Naik/PW4 stated that he asked the accused if he had any valid legal documents to possess the charas but he replied in the negative and the scooter M-80 on which the accused was going was taken over for investigations. He stated that a seizure report was prepared at the spot and given to the accused under his acknowledgment, a panchanama was drawn and a copy of which was given to the accused, under acknowledgment and all the properties including suspected charas and the said scooter were attached under panchanama and thereafter he returned to the Police Station along with the accused and lodged his complaint on behalf of the State and prepared a Memo of Arrest of which a copy was given to the accused under his acknowledgment and then he immediately handed over the attached property to Writer Constable Umesh Xete, P.C. Buckle No.4203 for safe custody and prepared a note and obtained the acknowledgment of the said Writer Constable and produced the said note at Exh.46. He stated that he sent the intimation under Section 57 of the Act to Dy. S. P. De Sa and produced a copy of the same at Exh.47. He then stated that he prepared a forwarding letter to the Director of Food and Drug Administration under his signature and bearing specimen

impression and also prepared a letter to S.P., CID, CB, for forwarding the exhibits to the Office of DFDA. The copy of the letter to the Superintendent was produced at Exh.49 and that addressed to the Drugs Controller was produced at Exh.48.

7. To support the version of P.I.Naik/PW4 the prosecution examined Vinod Sharma/PW3. As per Vinod Sharma/PW3 on 30-11-2002 he was at his shop near the Tourist Hostel Complex and at about 6.30 p.m. one constable came to him and told him to come to Calangute Police Station where he was called by P.I.Naik/PW4 and accordingly he went to Calangute Police Station where P.I. G.G. Naik and another person was present and P.I. Naik told them of the receipt of reliable information that a person from South India, aged about 55-58 years wearing a white shirt, black pant of dark complexion was going to come on M-80 two wheeler at Paradise Village Hotel at Calangute to deal in drugs probably charas. He stated that P.I. Naik also told them that they had sent the information to Dy. S. P. but he did not know how it was sent, and he agreed to act as a panch witness to the said raid and he then left the Police Station in a Gypsy along with P.I.Naik/PW4, another

person and three other policemen. He stated that one constable was carrying a bag containing weighing articles, candle, match box while P.I. Naik had personally carried the seal in his pocket. He stated that he did not know what was the inscription of the said seal. He stated that at about 7.00 p.m. they reached near the spot and parked their vehicle in one corner and they then concealed their presence in the vicinity and at about 7.20 p.m. they noticed one M-80 scooter coming from Calangute side and one constable stopped the two wheeler since the description of the person matched with the information and thereafter P.I. Naik showed his identity card and disclosed his designation to the said person and introduced all of them to the rider of the said scooter M-80 and then the Police surrounded the rider. He stated that P.I. Naik asked the rider his name which he disclosed as Susai Raju and identified the accused as the said Susai Raju. He stated that P.I.Naik wanted to take his search for charas and also told the accused that the search could be taken before a Gazetted Officer or a Dandaadhikari if he so desired and the accused replied that there was no need to take him before the Officer and that his search could be taken before P.I. Naik himself whereupon P.I.Naik also told the accused that he could

take the search of the raiding party, including the panchas which the accused also declined. He stated that the talk between P.I.Naik and the accused was in Hindi. Vinod Sharma/PW3 further stated that there was a white colour bag on the left handle bar of the scooter M-80 and P.I. Naik asked the accused as to whom it belonged to and the accused replied that it belonged to him whereupon P.I.Naik told the accused to remove the cloth bag and which was kept on the seat of the said scooter and thereafter the accused opened the bag and removed some blackish colour substance in the form of a slab and two small black colour substances also in a slab shape which were found wrapped in polythene. Vinod Sharma/PW3 further stated that besides the said blackish colour substance, the accused also removed a ration card, a credit card and some other cards, all in the name of the accused. He stated that P.I.Naik told them that the said substances were giving a peculiar odour and were suspected to be charas and the said substances were wrapped in newspaper which was in English and thereafter he took the weight of the said blackish substance which was found to be 280 gms. and which black substances were put in a polythene bag and then in a green colour envelope which was thereafter packed

and sealed with 7 seals of the Police Station. He stated that the said envelope was signed by him, the second pancha, P.I. Naik and the accused. He also stated that the ration card, identity card, other cards and raybon glasses were put in an envelope and packed, sealed and signed by them as before. He stated that P.I. Naik took personal search of the accused and during this search a brown colour leather wallet was found in the pant pocket of the accused and upon opening the same it was found to contain notes of the following description:- 8 x 100, 3 x 50, 1 x 20 and some other notes and one U.S. Dollar, besides a driving license and which articles were put in the leather wallet which was then put in an envelope packed, sealed and signed as before. Vinod Sharma/PW3 also stated that the scooter M-80 was also attached and further stated that he did not recall its registration number. Vinod/PW3 stated that P.I.Naik had asked the accused if he had any documents to possess charas and the accused had replied in the negative. Vinod/PW3 then stated that a panchanama was drawn by P.I.Naik which was signed by him, the second panch, P.I.Naik and the accused and copy of which was given to the accused and his signature was taken in acknowledgment. In cross-examination he stated that his shop is

located in the Tourist Hotel building at Umtawaddo, which is at a distance of half a kilometer from Paradise Hotel. In further cross-examination he stated that he was not frequenting the Calangute Police Station but sometimes he went to the Police Station but further stated that he did not know P.I.Naik prior to the date of the raid. He denied the suggestion that P.I.Naik was his friend and further stated that P.I.Naik did not come to his shop. In further cross-examination he stated that he assisted the Police by acting as a panch witness but had not given such assistance at any time earlier. A specific suggestion that he had acted as a panch witness at least 10 to 12 times was denied by him. In further cross-examination he stated that he went to the Police Station on his scooter and had reached there within 5 minutes and on reaching there he went and met P.I.Naik where there was one person and policeman by name Pawaskar and there were also 3 to 4 policemen and they were there at the Police Station for about 15 to 20 minutes till they left for the raid. In further cross-examination he stated that he did not know the registration number of the said M-80 scooter or the registration number of the Maruti Gypsy in which they had gone for the raid. He also stated that the contents of the kit box were

shown to them before they had proceeded for the raid and they included a weighing scale, candles, weights etc. In further cross-examination he gave the description as to how the seized article was weighed. He also stated that he recalled that carbon paper was put by P.I.Naik whilst writing the panchanama but did not recall how many carbon papers were taken by P.I.Naik. In further cross-examination Vinod/PW3 stated that P.I.Naik had stopped the accused with his two wheeler. His earlier statement was brought to his notice, that earlier he had stated that a Police Constable had stopped the two wheeler and he replied that both the statements were correct. In further cross-examination he confirmed that the accused spoke in Hindi but denied the suggestion that the accused had not understood the talk of P.I.Naik. He further stated that the accused had disclosed his name as Susai Raju and that he did not know any other details of his name but admitted that in the panchanama the name of the accused might have been recorded as "Susai Tambu Raju". As regards the English newspaper which was wrapped to the substance, he stated that he did not know what P.I.Naik/PW4 did with it.

8. There can be no dispute that the accused was searched and arrested by P.I.Naik as this fact has been admitted by the accused in his statement recorded under Section 313 of the Code. On behalf of the accused reliance has been placed on the case of **Vikram Reddy** v. **State of Goa**(2002(1) GLT 116) to support a submission that the evidence of P.I.Naik/PW4 is unreliable. It is not necessary to refer in detail to the observations of this Court in that case. This Court in the case of **Vikram Reddy** v. **State of Goa(**supra) observed that a witness who is shown to have stated a falsehood to prove a part of the prosecution story cannot be relied upon. There can be no quarrel with the said proposition, but on the facts and circumstances of this case the said observations are inapplicable. There is nothing inconsistent in the version given by PW4, and as far as the first part of the version given by him, the same stands sufficiently corroborated by Dy. S. P. De Sa/PW5. Police Officers are also to be relied upon and not in every case, they can be treated as unworthy of credit. On behalf of the accused, it has been submitted that Sharma/PW3 was not at all present for the said raid and his evidence cannot be accepted by way of corroboration to the evidence of P.I. Naik/PW4. In that regard, a

number of inconsistencies have been brought to light. As per the learned Counsel on behalf of the accused if Sharma/PW3 was present, he would have known the complete name and the address of the accused as described by P.I.Naik/PW4 and would not have merely stated that the name of the accused was given by him as Susai Raju. It is further pointed out on behalf of the accused that Sharma/PW3 has not been able to give the complete inscription of the seal; complete details of the notes found with the accused; did not know the registration number of the scooter used by the accused as well as the raiding party and also forgot to mention about the coins and the five rupee notes and these facts are indicative of the fact that he was not at all present for the said raid. In my view none of the aforesaid circumstances can be taken to discredit the evidence of Sharma/PW3. Powers of observation retention and reproduction differ from person to person and minor variations are always found in the evidence of even truthful witnesses. In this case, Sharma/PW3 has substantially corroborated the version of P.I.Naik/PW4. Sharma/PW3 is a person who runs business of a shop which is situated in Tourist Hostel complex at Calangute and this is the first time he stood as a panch witness at the

request of P.I.Naik/PW4 when he was called by a constable, to come to the Police Station. The entire cross-examination of Sharma/PW3 shows that he has stood well the test of cross-examination, the said minor discrepancy notwithstanding. It is true that P.I.Naik/PW4 stated that they reached the spot at about 6.35 p.m. while Sharma/PW3 stated that they reached at about 6.55 p.m. but the said difference in timing cannot be taken into consideration to arrive at a conclusion that Sharma/PW3 was not at all present when the accused was intercepted and the search of his scooter and person was taken. It could not certainly be expected of a person when he was deposing after almost two years to exactly remember the timing at which the accused reached the place. It is not expected of witnesses that timings would be mentioned with mathematical precision in all cases and also because of slight variation in time the evidence of Sharma/PW3 could not be discarded as of a person who was not present. The discrepancies in his evidence noted herein above in relation to the evidence of P.I.Naik/PW4 are only minor in nature and they do not affect the core of his version or substance of his evidence so as to make his version unreliable. It is quite natural that minor variations in the

evidence of even truthful witnesses appear in their evidence and on that count alone the evidence of Sharma/PW3 cannot be discarded. Sharma/PW3 is an independent witness having his own business and there is no reason why he would falsely depose to support a case of P.I.Naik/PW4 unless he was present for the raid. The trial Court has rightly accepted his evidence and I have no reason not to accept the same.

9. It has been stated by P.I.Naik/PW4 as well as by Sharma/PW3 that the conversation between P.I.Naik/PW4 and the accused took place in Hindi. The learned Counsel on behalf of the accused therefore submits that the panchanama also ought to have been written in hindi and in support of this submission the learned Counsel has placed reliance on the case of **Hasan I. Inamdar v. State of Maharashtra**(2003 ALL M R(Cri) 1889) wherein this Court observed as follows:-

> "When the appellant himself told the members of the raiding party more particularly P.S.I. Vaigankar that he was an illiterate person and was not knowing any English other than Marathi and Hindi, it was obligatory on the part of the

> Investigating Officer to draw panchanama in Marathi which is the language of the State. In fact all panchanamas should be drawn in Marathi in Maharashtra. This Court is at a loss to understand the reason behind drawing the panchanama in English. Unless the accused insists for drawing the panchanama in English by showing the cause that he does not know any English than only, panchanamas are not to be drawn in English. It is a matter of experience that even non Marathi speaking persons do understand Hindi may be in good form. In such cases drawing panchanama in Hindi and Marathi is permissible but otherwise the Investigating Officers draw the panchanamas in Marathi in Maharashtra which would enable the accused to know the said panchanama and understand the same".

10. In my view, the said observations are not at all applicable to the facts of the case at hand. All that the evidence of P.I.Naik/PW4 and Sharma/PW3 shows that the conversation between P.I.Naik/PW4 and the accused took place in hindi. There is no evidence to suggest that P.I.Naik/PW4 was conversant in writing a panchanama in hindi for him to have

recorded the panchanama in hindi. Although the official language of the State is konkani, hardly any police officer draws a panchanama in that language and as a matter of practice panchanamas are stated are recorded in the language in which the concerned officer is more familiar. Drawing a panchanama in a language the accused was not familiar with cannot be used either to reject the panchanama, or the evidence given in support thereof or to doubt the case of prosecution. As far as other articles found on the person of the accused, Sharma/PW3 has given sufficient details of the same and only because he could not give complete details in all respects or for that matter could not recollect the registration numbers of either of the two wheelers could not be a ground to reject the evidence of Sharma/PW3 which otherwise inspires confidence as that of an independent witness who was not at all obliged to depose falsely and support a version given by P.I.Naik/PW4. In other words, the evidence of P.I.Naik/PW4, Dy.S.P. De Sa/PW5 and Sharma/PW3 is convincing and the same has been rightly relied upon to come to the conclusion that the accused was found in possession of the said 280 gms. of charas.

11. The second aspect of the case of the prosecution is as regards the custody of the seized article and its subsequent analysis. As already seen, P.I.Naik/PW4 stated that he immediately handed over the attached property to Writer Constable and obtained his signature on a note which was produced at Exh.46. The prosecution could not examine the Writer Constable Umesh Xete since by that time he had retired from service. Records show that he was served with summons at one stage and a bailable warrant was also issued to him but subsequently the bailable warrant was returned unexecuted with endorsement that the said Writer Constable had left the State. The prosecution therefore examined his successor Head Constable Sakharam Naik/PW6 who also produced the muddemal register of the Police Station and the extract of which was marked Exh.59. Sakharam/PW6 stated that Constable Umesh Shet was the Writer Constable with whose signature and writing he was familiar and that he was no longer attached to the Police department and was unavailable at his residence, having retired from Police service. With reference to the muddemal register/Exh.59 he stated that on 30-11-2002 the Writer Constable Shet had made entry at serial no.4 and had recorded

all the items received by him in sealed condition and that the said handwriting of entry no.4 dated 30-11-2002 is that of said Constable Shet. Sakharam Naik/PW6 further stated that the said Constable Shet had also made a record on the said register that he had personally left with the attached property being the suspected charas to the Office of SP, CID, CB, Panaji to hand over the same for chemical analysis and had made a record on 2-12-2002 and had identified the same and which signature Sakharam/PW6 identified. He also identified the signature of Writer Constable Shet on the said muddemal register and the entry made by the said Writer Constable Shet on 24-12-2002 upon the seized article having been received, after analysis. It is submitted on behalf of the accused by learned Counsel that the entry at serial no.4 dated 30-11-2002 was not signed by the said Writer Constable Shet although he signed on 2-12-2002 at the time of taking the seized article to be delivered to the Office of SP, CID, CB to be forwarded to the laboratory. In my view, the fact that Writer Constable Shet did not sign the said entries on 30-11-2002, after writing the said muddemal register does not leave any room for suspicion firstly because it is Writer Constable Shet who made the said entries as confirmed by

Sakharam/PW6. Moreover, the evidence of P.I.Naik/PW4 shows that P.I.Naik/PW4 had handed over the seized articles to Writer Constable Shet and had obtained his acknowledgment having received the same on the note Exh.46, which he produced. On the basis of the said note Exh.46, the said entry on the muddemal register dated 30-11-2002 in his own handwriting and subsequent entry made by Writer Constable Shet on 2-12-2002 gives a very clear indication that after the seizure the seized article had remained in the custody of Writer Constable Shet and on 2-12-2002 he took the same, as per the said endorsement on the muddemal register to be delivered to Gaurish Mapari/PW2. Gaurish/PW2 in his turn stated that on 2-12-2002 he received from Police Constable Shet, Buckle No.4203 a letter No.8328 dated 30-12-2002 addressed to SP, another letter No.8327 dated 30-11-2002 addressed to the Drugs Controller, Panaji in duplicate having the specimen seal along with one sealed envelope stated to contain 280 gms. of suspected charas involved in Crime No.107/2002 of Calangute Police Station which he acknowledged and he kept the sealed envelope in a steel cupboard and forwarded the same on the same day to the laboratory under the signature of the SP, Crime, Shri Muktesh

Chander, and the said letter was duly received in the said laboratory under acknowledgment. Mahesh Kaissare/PW1 in his turn stated that he was working as a Junior Scientific Officer in the Directorate of Food and Drugs Administration and that on 2-12-2002 the Directorate of Food and Drugs Administration, Panaji had received from the Superintendent of Police, CID, CB, Panaji one sealed light greenish colour paper envelope, the particulars of which he mentioned in his report. He further stated that the seals fixed on the envelope were intact, individually covered with cello tape and tallied with the specimen seal impression sent separately by letter No.8327 dated 30-11-2002. Kaissare/PW1 stated that he carried out the analysis on 11-12-2002. He also stated that the envelope contained a heat sealed colourless transparent polythene bag having 281 gms. of dark brown coloured substance in the form of 3 pieces, one squarish flat piece and 2 other small pieces and all the said 3 pieces were without having any wrappings and he took about 6 gms. of the substance as representative sample and after having carried out the tests, the description of which he mentioned, he came to the conclusion that the substance analysed by him contained charas. Kaissare/PW1 was not cross-examined by the

defence. It is pointed out, on behalf of the accused, that Kaissare/PW1 has not categorically stated that he had taken the said 6 gms. from each of the said 3 pieces. Here, it may be noted that Kaissare/PW1 has referred to the substance in the form of 3 pieces and has further stated that he took 6 gms. of substance as a representative sample and therefore it could safely be presumed, in the absence of any cross-examination to the contrary, that he being an expert, he had taken a sample from all the 3 pieces for analysis and after analysing the same had come to the conclusion that it contained charas. It is also pointed out on behalf of the accused that the substance when weighed by P.I.Naik/PW4, it was to be 280 gms. whilst Sanzgiri found it to be 281 gms. The difference in weight is not at all substantial and otherwise also it could be explained from the fact that P.I.Naik/PW4 had used an ordinary scale whilst Sanzgiri as an expert used a sophisticated scale and that apart it also appears that Kaissare/PW1 took the weight along with the transparent polythene bag. In such a situation, there is absolutely no room to doubt that the sample seized was not the sample analysed by Kaissare/PW1. That apart, on behalf of the accused no provision of the Act is brought to the notice of the Court that quantitative

analysis of charas is required to be done. Charas or Hashish is the other non proprietary name of Cannabis and Cannabis Resin which is the name of the drug(international non proprietary name). Charas which is commonly known as Hashish is a resin exuded from the leaves and stems of a plant known as Cannabis Sativa or Cannabis Indica or Indian hemp. Charas are smoked with tobacco in a cigarette or a pipe or a hukka and is said to be more powerful of Cannabis preparations. The principle constituent of the resin is Cannabinol which on exposure to heat is partly converted to the very active isomeric Tetrahydrocannabinols(THC) and the active principle concentration in Charas varies between 25% to 40%(See page 500 of Dr. K. S. Narayan Reddy's Essentials of Forensic Medicine and Toxicology and page 911 of Parikh's Text Book of Medical Jurisprudence and Toxicology).

12. Section 2(iii) defines Cannabis(hemp) to mean:-

(a) Charas, that is, the separated resin, in whatever form, whether crude or purified obtained from the Cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish.

(b) Ganja, that is the flowering or fruiting tops of the Cannabis plant(excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of Cannabis or any drink prepared therefrom.

13. The Apex Court in the case of **Joseph Fernandes** v. **State of Goa**(2002 Drugs Case 22) has observed that the Analyst who had tested the contraband in the laboratory, to a question in cross-examination had said that he could not answer whether the contraband contained cowdung also but in the certificate as well as in the examination-in-chief, he had stated that the contraband was charas and, therefore, the aforesaid isolated answer was hardly sufficient to destroy the probative value of the evidence of that witness. This decision might not throw much light in the controversy sought to be raised. In the case of **Ketil Mardal** v. **State of Goa**(1997 Cri.L.J.3581) it was contended that determination of percentage of charas was necessary and percentage of charas was not determined in that case and,

therefore, the sample had to be treated as less than 5 gms. and, therefore, meant for personal consumption. In that context, the Division Bench of this Court observed that the identification test for charas was positive. The definition of charas as contained in Section 2(iii)(a) states that charas, is the separated resin, in whatever form, whether crude or purified, obtained from the Cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish. The substance qualifying as charas, the charas can be crude or purified. In crude form there would certainly be impurities besides charas and if it is so, the analysis of the substance would always show that it contains charas since charas may itself contain impurities being in crude form. This decision does throw some light on the controversy. When the Analyst has opined that the substance analysed by him contained charas we are bound to presume in the absence of any cross-examination on that aspect, that the substance contained the active principle(THC) in the required concentration varying from 25% to 40%. In my view, the evidence as regards the custody of the sample subsequent to its seizure and analysis leaves no room to doubt that it was not kept in proper custody till the time it was seized and analysed by

Sanzgiri. The case of **Premnath D. Shah** v. **State of Goa**(1998 ALL M R(Cri) 757) on facts would not be applicable to this case.

14. The Judgments cited on behalf of the accused and reported in **Shri Premnath s/o Dukhi Shah** v. **The State of Goa** (1998 ALL MR(Cri) 757), **John Ohuma Ogmekwe and another** v. **Intelligence Officer, Narcotic Control Bureau, Bombay and another**(1998 ALL MR(Cri) 860) and **Bahadur Singh** v. **State of Madhya Pradesh and another**(2002 ALL MR(Cri) 2449(S.C.) stood on their own facts and are inapplicable to the facts of the case at hand.

15. The accused was found with 280 gms. of charas which is a quantity which is styled as less than commercial and greater than small quantity and for which punishment provided is R.I. for a term which may extend to 10 years and with fine which may extend to One lakh of Rupees. The learned Special Judge has considered the accused to be a senior citizen though it appears that at the time of commission of offence the accused was not more than 57 years and has imposed upon the accused sentence of R.I. for a term of 2 years and a fine of Rs.20,000/-.

The learned Special Judge, it appears had perused the medical papers of the accused who was suffering from diabetes and came to the conclusion that his diabetes was under control on medication. The Apex Court in the case of **Union of India** v. **Kuldeep Singh**((2004) 2 SCC 590) has noted that imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime i.e. where it relates to offences related to narcotic drugs and psychotropic substances which have great impact not only on the health fabric but also on the social order and public interest, cannot be lost sight of and per se requires exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the

society and the sentencing process has to be stern where it should be. Offences such as these are on the increase and normally a stern punishment ought to be awarded in such cases with a view to deter others from committing the same. Deterrence remains as one of the main objects of imposition of sentence. Considsering the sentence imposed upon the accused, there is no further room to decrease the same.

16. In my view, the prosecution has proved its case beyond reasonable doubt against the accused. There is no scope for interference with the Judgment of conviction and sentence of the learned Special Judge. I find there is no merit in this appeal. Consequently, the same is dismissed. The accused to surrender before the learned Special Judge within a period of three weeks to undergo the remaining part of his sentence. The bail bonds of the accused shall stand cancelled.

N. A. BRITTO, J.

RD